



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0096; FRL-9961-55-Region 9]

Approval of California Air Plan Revisions, Eastern Kern Air Pollution Control District

and Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Eastern Kern Air Pollution Control District (EKAPCD) and Imperial County Air Pollution Control District (ICAPCD) portions of the California State Implementation Plan (SIP). These revisions were submitted by the California Air Resources Board (CARB) in response to EPA's May 22, 2015 finding of substantial inadequacy and SIP call for certain provisions in the SIP related to affirmative defenses applicable to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revisions because the Agency has determined that they are in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or the Act).

DATE: Any comments must arrive by **[Insert date 30 days after the date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0096 at <https://www.regulations.gov>, or via email to Andrew Steckel, Rulemaking Office Chief at Steckel.Andrew@epa.gov. For comments submitted at Regulations.gov, follow the online

instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947-4125, vineyard.christine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. What action is the EPA proposing today?

The EPA is proposing to approve revisions to the California SIP. The revisions will remove from the EKAPCD and ICAPCD portions of the California SIP provisions related to affirmative defenses that sources could assert in the event of enforcement actions for violations of SIP requirements during SSM events. Removal of the affirmative defense provisions from the SIP will make the EKAPCD and ICAPCD portions of the SIP consistent with CAA requirements with respect to this issue. EKAPCD and ICAPCD are retaining the affirmative defenses solely for state law purposes, outside of the EPA approved SIP. Removal of the affirmative defenses from the SIP is also consistent with the EPA policy for exclusion of “state law only” provisions from SIPs, and will serve to minimize any potential confusion about the inapplicability of the affirmative defense provisions in federal court enforcement actions. Table 1 lists the rules addressed by this proposal with the dates on which each rule was rescinded by the EKAPCD or ICAPCD and submitted by CARB in response to EPA’s final action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 FR 33839 (June 12, 2015), hereafter referred to as the “SSM SIP Action.”

TABLE 1 - SUBMITTED RULES

Local Agency	Rule #	Rule Title	Rescinded	Submitted
EKAPCD	111	Equipment Breakdown	11/10/16	12/06/16
ICAPCD	111	Equipment Breakdown	09/22/15	03/28/16

On January 12, 2017, the EPA determined that the submittal for EKAPCD Rule 111 met the completeness criteria in 40 CFR Part 51 Appendix V, and on September 28, 2016, the submittal for ICAPCD Rule 111 was deemed complete by operation of law under 40 CFR Part 51 Appendix V. The completeness criteria must be met before formal EPA review of the submittals for approvability in accordance with applicable CAA requirements.

II. What is the background for the EPA's proposed action?

On June 12, 2015, pursuant to CAA section 110(k)(5), the EPA published the final SSM SIP Action finding that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and called on those states to submit SIP revisions to address those inadequacies. 80 FR 33839. As required by the CAA, the EPA established a reasonable deadline (not to exceed 18 months) by which the affected states must submit such SIP revisions. In accordance with the SSM SIP Action, states were required to submit corrective revisions to their SIPs by November 22, 2016. The EPA's reasoning, legal authority, and responsibility under the CAA for issuing the SIP call to California can be found in the SSM SIP Action.

In the SSM SIP Action, the EPA determined that EKAPCD Rule 111 and ICAPCD Rule 111 include elements of an affirmative defense for excess emissions during malfunctions. Specifically, EKAPCD Rule 111 and ICAPCD Rule 111 contain affirmative defense provisions that preclude enforcement for excess emissions that would otherwise constitute a violation of the applicable SIP emission limitations. The EPA concluded that EKAPCD Rule 111 and ICAPCD Rule 111 operate to alter or affect the jurisdiction of federal courts in the event of an enforcement action, contrary to the enforcement structure of the CAA in section 113 and section 304. See 80 FR 33972 (June 12, 2015).

On March 28, 2016 and December 6, 2016, ICAPCD and EKAPCD, respectively, made submittals in response to the SSM SIP Action. As noted above, the EPA found these submittals complete on September 28, 2016 and January 12, 2017, respectively. In the submittals, EKAPCD and ICAPCD requested that EPA revise the California SIP by removing EKAPCD Rule 111 and ICAPCD Rule 111 in their entirety from the California SIP. This approach is consistent with the EPA's interpretation of CAA requirements for SIP provisions.

III. Why is the EPA proposing this action?

In the SSM SIP Action, the EPA made a finding of substantial inadequacy and issued a SIP call with respect to EKAPCD Rule 111 and ICAPCD Rule 111 pursuant to CAA section 110(k)(5). In response, CARB submitted SIP revisions requesting the EPA to remove EKAPCD Rule 111 and ICAPCD Rule 111 from the California SIP in their entirety. Affirmative defense provisions like these are inconsistent with CAA requirements and removal of these provisions would strengthen the SIP. This action, if finalized, would remove the affirmative defense provisions from the EKAPCD and ICAPCD portions of the EPA-approved SIP for California. The EPA is proposing to find that these revisions are consistent with CAA requirements and that they adequately address the specific SIP deficiencies that the EPA identified in the SSM SIP Action with respect to the EKAPCD and ICAPCD portions of the California SIP.

IV. Proposed Action

The EPA is proposing to approve the California SIP revisions removing EKAPCD Rule 111 and ICAPCD Rule 111 from the EKAPCD and ICAPCD portions of the California SIP. The EPA is proposing approval of the SIP revisions because the Agency has determined that they are

in accordance with the requirements for SIP provisions under the CAA. The EPA is not reopening the SSM SIP Action in this action and is taking comment only on whether this SIP revision is consistent with CAA requirements and whether it addresses the “substantial inadequacy” of the specific California SIP provisions identified in the SSM SIP Action.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve SIP submissions that comply with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state requests as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: March 29, 2017.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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